UNITED STATES DISTRICT COURT DISTRICT OF RHODE ISLAND

TEAMSTERS LOCAL 251 HEALTH: SERVICES AND INSURANCE PLAN, and PAUL A. MACDONALD, in his cofficial capacity as Executive: Director,

Plaintiffs,

v. : C.A. No. 05-063**m**²

RAINHA CONSTRUCTION COMPANY Defendant.

AFFIDAVIT OF PAUL A. MACDONALD IN SUPPORT OF JUDGMENT BY DEFAULT

- I, Paul A. MacDonald, being first duly sworn, depose
 and state as follows:
- 1. I am the Executive Director of Teamsters Local 251 Health Services and Insurance Plan ("the Fund"), a joint labor-management employee benefit plan which provides health and other benefits to members of Teamsters Local 251.
- 2. Defendant is party to a collective bargaining agreement which requires contributions to the Fund based on hours worked for defendant by members of Teamsters Local 251 "Local 251." These funds are used to purchase insurance benefits.
- 3. On July 26, 2004, an audit of Defendant's payroll covering the period January, 2000 through December, 2002

revealed that Defendant had not made contributions for all of the hours worked by member of Local 251. To date,

Defendant has failed to remit the amount due to the Fund,

as revealed by the audit. The amount due is \$3,022.92.

(See Exhibit 1.)

- 4. For the period of June through August, 2004,
 Defendant failed to submit remittance reports and make any
 payments to the Fund. Accordingly, the amount due is
 \$1,640.80 (See Exhibit 2).
- 5. Contributions to the Fund are due by the 10th of the month following the month in which the work was performed. Pursuant to the Trust Agreement, interest is accrued at the rate of 1.5% per month. Interest on the unpaid contributions now stands at \$1,277.75. (See Exhibit 2).
- 6. Pursuant to the Employee Retirement Income Security
 Act, 29 U.S.C. §§1132 and 1145, the Court shall award a 20%
 penalty. This penalty is also provided for in the Fund's
 Trust Agreement. Penalties are in the amount of \$932.74.
 (See Exhibit 2.)
- 7. The Plan has thus far expended costs in the amount of \$290.00 and counsel fees in the amount of \$1,275.00 in prosecuting this action.
- 8. In light of the foregoing figures, the Plan requests that the Court enter judgment in the amount of \$8,439.21.

9. The foregoing is true and correct to the best of my knowledge.

Dated: May 16, 2005

I, Paul A. MacDonald, being first duly sworn, on oath depose and state that I have read the foregoing affidavit and that the factual allegations contained therein are true to the best of my knowledge and belief.

Paul A. MacDonald

Subscribed and worn to before me, by Paul A.MacDonald, this /6 day of /4, 2005.

NOTARY PUBLIC

My commission expires: 6/18/05

Levie Hamsh

CERTIFICATION

I hereby certify that I caused a copy of the foregoing to be sent first-class mail, postage prepaid on this day of May, 2005, to the following party of record:

Mr. John Rainha, President Rainha Construction Corp. 57 Beach Rd. Cumberland, RI 02864

EXHIBIT 1



Teamster's Local 251 Health Services and Insurance Plan

PAYROLL COMPLIANCE REVIEW

REPORT

EMPLOYER NAME:

Rainha Construction

ADDRESS:

10 Nate Whipple Highway Cumberland, RI 02864

DATE OF PAYROLL AUDIT:

July 26, 2004

PERIOD EXAMINED:

January 1, 2002 through March 31, 2004

EMPLOYER REPRESENTATIVE, IF ANY, PRESENT AT THE TIME OF

THE PAYROLL AUDIT:

Ms. Donna Robidux

LOCATION OF EXAMINATION:

Same as above.

SUMMARY OR REASON FOR UNDER REPORTED CONTRIBUTIONS:

Due to clerical errors and the omitting of winter layoffs not all hours were reported to the Funds.



Teamster's Local 251 Health Services and Insurance Plan

PAYROLLCOMPLIANCE REVIEW

SUMMARY

Employer:

Rainha Construction

5,8625

Period Covered:

January 1, 2002 through March 31, 2004

 2002
 2003
 2004
 TOTAL

 Health & Welfare
 722.12
 1,427.20
 873.60
 3,022.92

Teamster's Local 251 Health Services and Insurance Plan

COMPANY: Rainha Construction

ADDRESS: 10 Nate Whippie Highway Cumberland, RI 02864

CONTACT: Ms. Donna Robidux PH NUMBER: 401-658-1661 AUDIT PERIOD: January 1, 2002 through March 31, 2004

AUDITOR: Richard A. Romagnoli

2002

Contribution Due

EMPLOYEE	S'S NIIMBED	JAN_	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Kennedy, Charles		2.00											160.00	162.00
	TOTAL	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	160.00	162,00
1														
		_				Amour	at Due							
WELFARE	\$4.26 \$4.46	\$8.52	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$713.60	\$722.12
	TOTAL	\$8.52	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$713.60	\$722.12

2003

Contribution Due

EMPLOYEE	S/S NUMBER	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Kennedy, Charles	2000/10	160.00	160.00											320.00
		160.00	160.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	320.00
		_				Amoun	t Due							
	(10)	[
~LFARE	\$4.46 \$5.46	\$713.60	\$713.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,427.20
,	TOTAL	\$713.60	\$713.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$1.427.20

2004

Contribution Due

ADIVAL LACE LAGE	É NIBADED	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Roulea, Dennis				160.00							1			160.00
	TOTAL	0.00	0.00	160.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	160.00
						Amount	Due							
		6												
WELFARE	\$5.46 \$0.00		\$0.00	\$873.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$873.60
•	TOTAL	\$0.00	\$0.00	\$873.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$873.60

EXHIBIT 2

Date	Hours	Rate	Amount	Due	Days late	Interest	Penalty	Total Due
Jan. 02	2	\$4.26	\$8.52	2/10/2002	•	\$5.06	\$1.70	
Dec.02	160	\$4.46	\$713.60	1/10/2003	853	\$304.35	\$142.72	
Jan. 03	160	\$4.46	\$713.60	2/10/2003	822	\$293.29	\$142.72	
Feb.03	160	\$4.46	\$713.60	3/10/2003	794	\$283.30	\$142.72	
Mar.04	160	\$5.46	\$873.60	4/10/2004	397	\$173.41	\$174.72	
2004								
6/27-7/03	40	\$5.86	\$234.40	8/10/2004	275	\$32.23	\$46.88	
7/04-7/10	40	\$5.86	\$234.40	8/10/2004	275	\$32.23	\$46.88	
7/11-7/17	40	\$5.86	\$234.40	8/10/2004	275	\$32.23	\$46.88	
7/18-7/24	40	\$5.86	\$234.40	8/10/2004	275	\$32.23	\$46.88	
7/25-7/31	40	\$5.86	\$234.40	8/10/2004	275	\$32.23	\$46.88	
8/01-8/07	40	\$5.86	\$234.40	9/10/2004	244	\$28.60	\$46.88	
8/08-8/14	40	\$5.86	\$234.40	9/10/2004	244	\$28.60	\$46.88	
SubTotal			\$4,663.72			\$1,277.75	\$932.74	\$6,874.21
Attorneys	Fees							\$1,275.00
Costs								\$290.00
TOTAL	OWED							\$8,439.21

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